

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

BOBBY RAY COLLINS

VS.

STATE OF TEXAS

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§
§

CIVIL ACTION NO. 4:13-CV-531-C

ORDER ADOPTING MAGISTRATE JUDGE'S FINDINGS AND CONCLUSIONS
AND ORDER DENYING CERTIFICATE OF APPEALABILITY

In this action brought by Petitioner, Bobby Ray Collins, under 28 U.S.C. § 2254, the Court has made an independent review of the following matters:

1. The pleadings and record;
2. The proposed findings, conclusions, and recommendation of the United States Magistrate Judge filed on July 10, 2013; and
3. The Petitioner's written objections to the proposed findings, conclusions, and recommendation of the United States Magistrate Judge filed on August 1, 2013.

The Court, after **de novo** review, concludes that the Petitioner's objections must be overruled and that the petition for writ of habeas corpus must be dismissed without prejudice, for the reasons stated in the Magistrate Judge's findings and conclusions.¹

Therefore, the findings, conclusions and recommendation of the Magistrate Judge are
ADOPTED.

¹As noted by the Magistrate Judge, in this particular petition under § 2254, Bobby Ray Collins asserts challenges to his 1996 *federal* convictions in *United States v. Collins*, No. 4:95-CR-103-Y for interference with commerce by robbery, in violation of 18 U.S.C. § 1951, and two counts of using and carrying a firearm in violation of 18 U.S.C. § 924(c). A petition under § 2254 is not the proper vehicle to challenge federal convictions. Collins has previously challenged state court convictions through a petition for writ of habeas corpus under § 2254 in *Collins v. Dretke*, No. 4:05-CV-157-Y, and previously challenged his federal convictions in a motion under § 2255, *Collins v. United States*, No. 4:12-CV-128-Y.

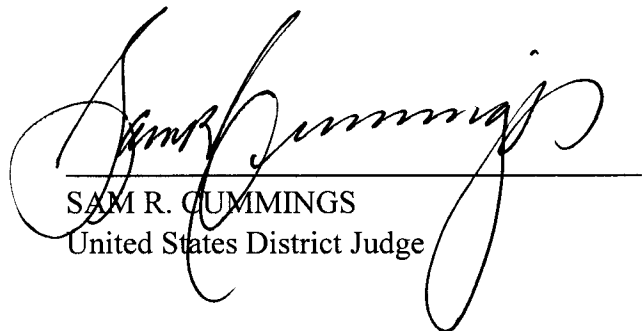
Bobby Ray Collins' petition for writ of habeas corpus under 28 U.S.C. § 2254 is DISMISSED without prejudice to his right to seek leave of the United States Court of Appeals for the Fifth Circuit to file a successive motion seeking relief under § 2255 or his right to file a petition asserting challenges to any state court convictions under 28 U.S.C. § 2254.

Certificate of Appealability

Federal Rule of Appellate Procedure 22 provides that an appeal may not proceed unless a certificate of appealability (COA) is issued under 28 U.S.C. § 2253. Fed. R. App. P. 22(b). Rule 11 of the Rules Governing Section 2254 Proceedings now requires that the Court "must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." Rules Governing Section 2254 Proceedings in the United States District Courts, Rule 11(a) (Dec. 1, 2009). The COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C.A. § 2253(c)(2)(West 2006). Pursuant to Rule 22 and 28 U.S.C. § 2253©, this Court finds that Bobby Ray Collins has failed to show that reasonable jurists would (1) find this Court's "assessment of the constitutional claims debatable or wrong," or (2) find "it debatable whether the petition states a valid claim of the denial of a constitutional right" and "debatable whether [this Court] was correct in its procedural ruling," and any request for a certificate of appealability should be denied. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Therefore, a certificate of appealability should not issue.

SIGNED August 12, 2013.



SAM R. CUMMINGS
United States District Judge